

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CIRBA INC. D/B/A DENSIFY
and CIRBA IP, INC.,

Plaintiffs/Counterclaim-Defendant,

v.

VMWARE, INC.,

Defendant/Counterclaim-Plaintiff.

Civil Action No. 1:19-cv-00742-LPS



DENSIFY'S MOTION FOR POST-TRIAL RELIEF

Kenneth L. Dorsney (#3726)
kdorsney@morrisjames.com
Morris James LLP
500 Delaware Avenue, Suite 1500
Wilmington, DE 19801
Telephone: (302) 888-6800

*Attorney's for Plaintiff,
Cirba Inc. and Cirba IP, Inc.*

Dated: March 9, 2020

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FILED UNDER SEAL

DENSIFY’S MOTION FOR POST-TRIAL RELIEF

Plaintiffs Cirba Inc. d/b/a Densify and Cirba IP, Inc. (collectively, “Densify”) hereby respectfully moves the Court to grant the Densify the following relief pursuant to its entry of judgment based on the jury verdict of January 24, 2020 (D.I. 577). Densify has submitted contemporaneously a Brief in Support of its Motion for Post-Trial Relief and the Declarations of Gerry Smith, Riyaz Somani, Andrew Hillier, and Jim Bergman. Attached hereto is a proposed Order.

1. An Order ENJOINING and RESTRAINING Defendant VMware, Inc. and its successors, assigns, officers, agents, servants, employees, attorneys, and persons in active concert or participation with them from making, using, selling, or offering for sale any products or releases that contain compute policies in DRS 2.0 or software not colorably different;

2. Set an ongoing royalty rate for infringing sales made after the judgement for the following products, as set forth in the Declaration of Jim Bergman: (i) current or future products

or releases that contain currently released versions of DRS software or anything not colorably different; (ii) current or future products or releases that contain currently-released versions of infringing VMWare on AWS software or anything not colorably different; and (iii) current or future product that contains the vROps v7, v7.5, or v8 software or anything not colorably different;

3. Enhanced damages of \$235,724,765;
4. Pre-judgment interest in the amount of \$26,759,810, as well as in an amount to be determined on any supplemental or enhanced damages the Court may award; and
5. Post-judgment interest in an amount to be determined at the appropriate time; and
6. Supplemental damages based on infringing sales not accounted for in the parties' damages calculations at trial, in an amount to be determined based on an accounting of such supplemental sales.
7. Ongoing accounting and reporting as set forth in the attached proposed Order.

Dated: March 9, 2020

Respectfully submitted,

/s/ Kenneth L. Dorsney

Sarah O. Jorgensen (*pro hac vice*)
sjorgensen@reichmanjorgensen.com
Reichman Jorgensen LLP
1201 West Peachtree, Suite 2300
Atlanta, GA 30309
Telephone: (404) 609-1040
Fax: (650) 623-1449

Christine E. Lehman (*pro hac vice*)
clehman@reichmanjorgensen.com
Reichman Jorgensen LLP
818 Connecticut Ave NW, Suite 850
Washington, DC 20006
Telephone: (202) 894-7310
Fax: (650) 623-1449

Kenneth L. Dorsney (#3726)
kdorsney@morrisjames.com
Morris James LLP
500 Delaware Avenue, Suite 1500
Wilmington, DE 19801
Telephone: (302) 888-6800

Courtland L. Reichman (*pro hac vice*)
creichman@reichmanjorgensen.com
Shawna Ballard (*pro hac vice*)
sballard@reichmanjorgensen.com
Jennifer P. Estremera (*pro hac vice*)
jestremera@reichmanjorgensen.com
Michael G. Flanigan (*pro hac vice*)
mflanigan@reichmanjorgensen.com

Khue V. Hoang (*pro hac vice*)
khoang@reichmanjorgensen.com
Jaime Cardenas-Navia (*pro hac vice*)
jcardenas-navia@reichmanjorgensen.com
Wesley L. White (*pro hac vice*)
wwhite@reichmanjorgensen.com
Rahul Sarkar (*pro hac vice*)
rsarkar@reichmanjorgensen.com
Reichman Jorgensen LLP
750 Third Avenue, Suite 2400
New York, NY 10017
Telephone: (212) 381-1965
Fax: (650) 623-1449

Peter J. Ayers (*pro hac vice*)
peter@ayersiplaw.com
Law Office of Peter J. Ayers, PLLC
220 Bowman Avenue
Austin, TX 78703
Telephone: (512) 771-3070

Joachim B. Steinberg (*pro hac vice*)
jsteinberg@reichmanjorgensen.com
Kate Falkenstien (*pro hac vice*)
kfalkenstien@reichmanjorgensen.com
Ariel C. Green (*pro hac vice*)
agreen@reichmanjorgensen.com
Reichman Jorgensen LLP
100 Marine Parkway, Suite 300
Redwood Shores, California 94065
Telephone: (650) 623-1401
Fax: (650) 623-1449

Gary J. Toman (*pro hac vice*)
gtoman@wwhgd.com
Weinberg Wheeler Hudgins Gunn & Dial
3344 Peachtree Road NE, Suite 2400
Atlanta, GA 30326
Telephone: (404) 876-2700
Fax: (404) 875-9433

**ATTORNEYS FOR CIRBA INC.
(D/B/A DENSIFY) AND CIRBA IP, INC.**

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JURY TRIAL DEMANDED

**[PROPOSED] ORDER GRANTING PLAINTIFFS'
MOTION FOR POST-TRIAL RELIEF**

Before the Court is Plaintiffs' Motion for Post-Trial Relief seeking a permanent injunction, enhanced damages, ongoing royalty, and other relief. Upon consideration of the materials submitted by the parties, the Court ORDERS as follows:

1. That Plaintiffs' motion for permanent injunction is GRANTED. It is therefore ORDERED that Defendant VMware, Inc. and its successors, assigns, officers, agents, servants, employees, attorneys, and other persons in active concert or participation with them, shall be enjoined from making, using, selling, or offering for sale any products or releases that contain compute policies in DRS 2.0 or software not colorably different.

2. That Plaintiffs' motion for ongoing royalties is GRANTED. VMware is to pay the ongoing royalties as identified by Densify, specifically in the Declaration of Jim Bergman; provided, however, in light of the permanent injunction above, there shall be no ongoing royalty on compute policies in DRS 2.0. Densify shall prepare a document specifying these ongoing royalties consistent with Mr. Bergman's declaration, which VMware may approve as to form, and the parties shall jointly submit to the Court within fourteen (14) days.

3. That Plaintiffs' motion for enhanced damages is GRANTED. VMware shall pay enhanced damages of \$235,724,765. Combined with the amounts found by the jury, the total damages award shall be \$471,449,530, excluding interest.

4. That Plaintiffs' motion for pre-judgment interest is GRANTED. VMware shall pay pre-judgment interest of in the amount of \$26,759,810 plus interest on supplemental damages calculated in the same manner.

5. That Plaintiffs' motion for post-judgment interest is GRANTED. Post-judgment interest shall be paid using the statutory rate set forth in 28 U.S.C. § 1961(a). The parties shall submit a document showing such amounts at the appropriate time.

6. That Plaintiffs' motion for supplemental damages is GRANTED. VMware shall provide Densify with an accounting of sales covered by the verdict and awards in this case between the time of the verdict and the final judgment, and the parties shall jointly submit a document showing supplemental damages due. If the parties cannot agree, they may submit competing proposals.

7. That Plaintiffs' motion for an accounting and ongoing reporting is GRANTED. VMware shall provide Densify with reports at least once per quarter showing sales of products covered by this Order or the Judgment in this case. If Densify disputes the accuracy of the information provided, VMware shall provide such supporting information as needed to determine the accuracy of VMware's reports. Should additional discovery be required, Densify may seek leave from the Court.

8. The Court retains jurisdiction over this case for purposes of administration of this Order and the judgment.

Executed this ____ day of _____, 2020.

By _____
Hon. Leonard P. Stark
Chief, United States District Judge